

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1144

COMMONWEALTH

vs.

CLIFFORD AHERN.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Following a jury-waived trial, the defendant was convicted of assault and battery by means of a dangerous weapon.¹ On appeal, he claims that there was insufficient evidence to support his conviction. We affirm.

The defendant claims that there was insufficient evidence to support his conviction of assault and battery by means of a dangerous weapon because the evidence did not establish the element of a touching.² We disagree. In reviewing the

¹ The defendant was also convicted of the refusal to submit to a police officer, and that conviction was filed. The judge found the defendant not guilty of armed assault with intent to murder, resisting arrest, and assault and battery on a family or household member.

² Pursuant to G. L. c. 265, § 15A, the elements of assault and battery by means of a dangerous weapon are: "(1) the presence of all the elements of assault, and (2) a touching, however slight, (3) by means of a dangerous weapon." Commonwealth v. Leonard, 90 Mass. App. Ct. 187, 190 (2016).

sufficiency of the evidence, we consider "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Latimore, 378 Mass. 671, 677 (1979), quoting Jackson v. Virginia, 443 U.S. 307, 318-319 (1979). Furthermore, "[c]ircumstantial evidence may be sufficient to prove guilt beyond a reasonable doubt, and the inferences drawn from such evidence 'need not be necessary and inescapable, only reasonable and possible'" (citation omitted). Commonwealth v. Braune, 481 Mass. 304, 306-307 (2019), quoting Commonwealth v. Goddard, 476 Mass. 443, 449 (2017).

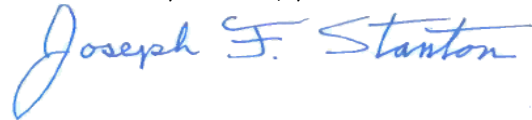
Here, there was sufficient evidence for a rational fact finder to infer that a touching had occurred. Sergeant Manning testified that he raised his left arm up to block the defendant who, inches away, attempted to stab him in the neck. Other witnesses testified in similar fashion.³ Although Manning did not initially realize that he had been stabbed, he later noticed that his shirt was ripped in the same area where he attempted to block the knife. In the same area of the rip, there was a small

³ Sergeant Dalessio testified that the defendant "began to violently start thrashing in a downward motion towards the upper portion of Sergeant Manning's head area, shoulder area and neck area." A neighbor, Michele Winiewicz, saw the defendant "swinging with the knife" in a "stabbing motion towards one of the officers against his . . . left shoulder."

nick in his arm, which in a few days became black and blue. From this evidence, it was reasonable for the fact finder to infer that while wielding the knife, the defendant touched Manning with it, which resulted in the rip of the shirt and the nick in Manning's arm. See Commonwealth v. Louis, 94 Mass. App. Ct. 404, 405 (2018). Contrary to the defendant's claim, there was no need to employ conjecture to reach this conclusion.

Judgment affirmed.

By the Court (Meade, Hanlon & Kinder, JJ.⁴),



Clerk

Entered: October 28, 2019.

⁴ The panelists are listed in order of seniority.